

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2022

Public Authority: Gloucester City Council
Address: Shire Hall
Westgate Street
Gloucester
Gloucestershire
GL1 2TG

Decision (including any steps ordered)

1. The complainant requested a copy of the data sharing agreement with a waste contractor. The Council disclosed the recorded information held relevant to the request but the complainant disputed that it satisfied their request. The Commissioner's decision is that the Council has conducted reasonable searches for the requested information which would have located further information, if it was held. He has therefore concluded that, on the balance of probabilities, the Council does not hold any further information in the scope of the request. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

2. On 20 October 2021 the complainant wrote to the Council and requested information in the following terms:

"Please can you provide details of the data sharing agreement in respect of the data sets applicable to this third party supplier.

Please clarify the circumstance in which this supplier would require disclosure of personal data other than the property address and what processing rules are in place in respect of this data sharing agreement".
3. The Council responded on 22 October 2021 and stated that it had a contract in place for the services with the service provider concerned. The Council confirmed that the service provider is a "Data Processor

under the UK General Data Protection Regulation of the Data protection Act (2018)". The Council explained that it was able to share personal data with the service provider as they were providing services on the Council's behalf.

4. On 9 November 2021 the Council provided the complainant with copies of an extract from the contract with the provider (specifically the data protection clauses) and its privacy notice explaining how it handles personal data relating to waste.
5. On 18 November 2021 the complainant wrote back to the Council and stated that it had not provided the information. The complainant wrote a further email to the Council on 22 November 2021 stating that the documents that had been provided were not what they had asked for. The complainant pointed out that the Council itself had stated that data sharing and processing rule agreements existed between itself and its data processors. The complainant asked whether the extract from the contract was considered to be the data sharing agreement.
6. The Council responded on 23 November 2021 and confirmed that the contract extract included the "data processing clauses and the Council's Customer Service privacy notice explains how the Council handles personal data with regards to waste".
7. The complainant wrote back to the Council on 23 November 2021 and again asked it to confirm that "the data sharing and processing rule agreement as declared by the council only exists only [sic] in the waste management contract under the heading Data Protection".
8. On 3 December 2021 the complainant wrote to the Council and asked it to conduct an internal review into its handling of the request.
9. The Council provided the outcome of its internal review on 17 December 2021. It confirmed that it had provided all the recorded information held relevant to the request dated 20 October 2021. The Council apologised for the delay in responding to the internal review request and explained the cause of the delay. The Council also explained that the contract extract which had been provided shows "Amey" as the supplier but Urbaser has bought out Amey and the contract was transferred.

Scope of the case

10. The complainant contacted the Commissioner on 24 November 2021 to complain about the way their request for information had been handled.
11. The Commissioner's investigation has focussed on whether the Council has disclosed all the information it holds that is relevant to the request.

Reasons for decision

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

14. In their complaint to the Commissioner, the complainant stated that they wanted to ensure that the Council had not withheld any information relevant to their request. They pointed out that the Council itself had referred to having a data sharing agreement in place with the third party concerned. However, to date, the Council had only provided an extract from its general contract with the third party and a copy of its privacy notice.
15. The complainant considers that, if the extract from the contract which the Council has provided is the 'data sharing agreement' that the Council has referred to, then the Council should provide additional training to its staff to ensure they are aware of what information is appropriate to share with the third party.

The Council's position

16. The Council advised the Commissioner that appropriate searches were conducted within the relevant departments who would likely hold relevant information. The searches included:
 - a. Digital Departmental Folders on the on-Premises Infrastructure accessible by Director of Policy and Resources / SIRO / S151 officer (all one person) and his relevant staff officers, including GDPR single Point of Contact.
 - b. Digital Departmental Folders on the on-Premises Infrastructure and available paper records undertaken by Waste Services Manager / Waste Contract Manager.

- c. One Legal Ltd – Legal Services provider to the Council.
17. The Council advised that its Customer Services Manager dealt with all facets of the request, liaising with its legal services provider to provide accurate replies to the requestor. All Customer Services folders were searched as well as the public facing website from which the Customer Services Privacy notice was downloaded and sent.
 18. The Council referred to a cyber incident that it experienced in December 2021 which resulted in staff not having access to electronic documents saved in its on-premises infrastructure. However, the Council confirmed that to assist with the Commissioner's investigation its IT department conducted several searches of its off site back-ups. The Council also confirmed that searches of the relevant Amey/Urbaser contract folder were undertaken at the time the request was received using the following search terms - "Data", "Sharing", "agreement", "customer", "Privacy" and "GDPR".
 19. The Council confirmed to the Commissioner that the extract from the Amey/Urbaser contract and the privacy notice represents the only recorded information held relevant to the request. Comprehensive searches have not identified any other recorded information falling within the scope of the request.
 20. The Council accepts that its reference in correspondence to the complainant that there was a data sharing agreement in place with the contractor was somewhat confusing. The Council advised that, in this case, a decision was made for its Customer Services Manager to be the single point of correspondence with the complainant. The Customer Service Manager does not have commercial contract management experience and would not, therefore, be necessarily aware that data processing could be set out within clauses/schedules of a commercial contract as opposed to there being a specific data protection/data sharing agreement in place. The Council pointed out that data sharing with third parties can be set out within a contract, as in this case. There is no legal obligation to have a separate data sharing agreement in place in cases like this as the contract covers all aspects of data protection that are applicable.

Commissioner's conclusion

21. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

22. Based on the evidence available to him the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate all the information falling within the scope of the request. The Commissioner also notes the Council's explanations concerning the data protection arrangements between itself and the contractor concerned.
23. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed.

Right of appeal

24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF